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Supreme Court, U.S.
FILED
JUN 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

85-2165

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

NO.

RE:

ALEXANDER DAMASCUS D.D.S.

Petitioner

-AGAINST-

PACIFIC BELL, et al,

Respondent

ON WRIT OF CERTIORARI

FROM THE SUPREME COURT OF THE

STATE OF CALIFORNIA

BRIEF FOR THE PETITIONER

ACTING IN PRO PER

49pp

QUESTIONS PRESENTED

1. Whether Constitutional and Civil rights are violated when wire-surveillance is used by investigators to screen out incoming calls and restrict Petitioner's business to that of receiving calls only for the purpose of investigation.

2. Whether Constitutional and Civil rights are violated when investigators intercept outgoing calls of Petitioner attempting to find an attorney to represent his case and pretend to be the attorney that Petitioner intended to call for purposes of investigation by Government agencies.

3. Whether Constitutional and Civil rights are violated when the F.B.I., Sheriff's department or any State, Federal or Municipal agency obtains a Federal court order for wire-surveillance and allows other private and public concerns to listen to edited tape recordings of conversations.

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

ALEXANDER DAMASCUS, D.D.S.

Petitioner,

v.

PACIFIC BELL, et al.,

Respondent.

PETITION FOR EXTRAORDINARY WRIT

Petitioner, Alexander Damascus, respectfully prays that an EXTRAORDINARY WRIT be issued to compel respondent Pacific Bell, et. al., to answer interrogatories

after Motion to Compel Interrogatories was verbally only granted in regards to one or two interrogatories, but overall denied because of the lack of jurisdiction of any State court to possess "competent jurisdiction" to compel Pacific Bell to disclose the contents of a Federal court order pursuant to 18 USC 2518(b) et seq.

No opinion was issued by any court, but as Pacific Bell stated in the Motion to Dismiss Appeal in the Sixth Appelate District the opinion of the Law and Motion department of the Superior Court should stand as "Denied due to lack of jurisdiction pursuant to 18 USC 2518(b)" of any State court to compel Pacific Bell to disclose the contents of a Federal court order. Only a court of competent jurisdiction defined as a United States District Court or a United States Court of Appeals can permit anyone to disclose the

contents of a Federal court order for a wire-surveillance pursuant to 18 USC 2518(b) et seq. After Petitioner filed his complaint DAMASCUS vs. PACIFIC BELL, et DOES I through XXX in California Superior Court in San Jose on December 6, 1984, Petitioner experienced the warrantless search and seizure of documents and other property from his safe deposit box. Petitioner was infuriated by obvious violations of his constitutional and civil rights resulting in Petitioner's Federal complaint originally filed April 7, 1985 in the Northern District of California in which he alleged: unlawful surveillance, and theft of documents and property and interference with his business by unknown agents. Simple discovery requests, e.g., request to produce a document, a copy of a search warrant, and a petition to hear a Writ of Mandamus to compel Pacific Bell to disclose contents of Federal Court order

are not unreasonable discovery requests, before Judge Ingram dismissed Petitioner's Federal complaint pursuant to F.R.C.P. 12 (b)(6), WITHOUT ALLOWING ANY DISCOVERY.

SUMMARY OF THE ARGUEMENT

A motion to dismiss for failure to state a claim upon which relief may be granted is a question of law and is reviewable de novo. The underlying premise of modern pleading rules is merely to test the sufficiency of a claim. Thus as long as material issues of fact exist, which, if resolved in favor of Damascus, would entitle Damascus to relief, the granting of the motion is in err and must be reversed. The exhaustion of Petitioners discovery in a hostile Federal Court after a Federally Court Ordered Warrentless search and seizure represents good cause for this court to use it's power of discretion to act on this petition.

JURISDICTION

Petitioner as Plaintiff filed a timely Notice of Appeal to the Dismissal of the Discovery Request due to lack of the Court's jurisdiction to the California Court of Appeals of the Sixth Appelate District acting in Pro Per. Upon dismissal of appeal in the Court of Appeals, Petitioner as Appelant in Pro Per requested a re-hearing by filing a Motion to Set Aside Dismissal of Appeal and Motion for Reconsideration of Appeal on February 10, 1986. This Motion was denied and Petitioner filed a timely Petition for Review on February 28, 1986. Timely petitions for review were denied by the California Supreme Court on April 2, 1986. Where the highest state court has jurisdiction to review a decision of a lower state court, but refuses to do so, the time for petitioning for a writ of certiorari runs from the date of the refusal to review. (American

Railway Express Co. v. Levee 263 U.S. 19, 20-21 (1923).) This petition is filed within ninety days of that date and is therefore timely. This Court's jurisdiction is invoked under 28 USC section 1257(4).

This Writ is authorized by 28 USC 1651(a) because it will aid the State court's Appellate jurisdiction that there are exceptional circumstances warranting the exercise of the court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court.

On February 24, 1986, Petitioner's request on a Writ of Mandamus to compel Pacific Bell to answer Interrogatories was denied in District Court and similiarly the Ninth Circuit Court of Appeals dismissed the action for which Petitioner only received a copy of the Mandate on Appeal No. C85 2873 on May 30, 1986. Petitioner did not receive

a "Dismissal Order" prior to receiving the Notification of Mandate. Petitioner acting in Pro per has exhausted attempts to compel answers to Interrogatories in hostile Federal courts in which no discovery motions were granted, and status conferences and pre-briefing conferences were cancelled prior to dismissing compalints pursuant to 12(b)(6) FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED.

Furthermore, appeal No. C85 2873 also included appeal from Judge Ingram's November 12, 1985 "Order" in which he stated "Plaintiff shall file no further complaints without leave of court."

This order violates Petitioner's constitutional and civil rights and has obvious Federal question jurisdiction in the Ninth Circuit.

Petitioner contends that the basis of any application for court ordered wire-

surveillance must be done in good faith and that after long standing problems and interruptions with Petitioner's telephone communications resulting in loss of Petitioner's business, this court should compel respondents to answer interrogatories, and issue an order to terminate court-ordered surveillance. Petitioner knows unknown investigators are using surveilance to limit incoming telephone calls to only those used for purposes of investigation, however it is necessary to compell Pacific Bell to answer interogitories to identify the parties to expose this unlawfull conspiracy, conducted under color of law to manufacture reasons for dental assistents interfering with petitioners business during the course of unlawfull investigations designed to benifit false victoms of staged dental incidents.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

"(N)or shll any State deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. U.S. CONST. amend XIV, § 1.

The warrantless search and seizure of Petitioner's safe deposit box before February, 1985, represents good cause for this court to use it's powers of discretion to act on this petition. [illegible]

STATEMENT OF CASE

This case arises out of a $491.00 credit awarded to Petitioner/Plaintiff for problems associated with his telephone lines during the period between February 1983 to at least September 1984, in which the award was only based on Credit for phone service for the sum of each of the 29 days. Petitioner/Plaintiff contends that the problem was continuous and not just happening on the days he had reported it. Furthermore, Petitioner/Plaintiff has paid in excess of $10,000.00 in Yellow Page Advertising to Pacific Telephone and Pacific Bell and the affect of interruptions in receiving incoming calls of prospective patients has had a drastic effect on his Dentistry Business.

Due to geographic location, Petitioner/Plaintiff received very few walk-in patients, but from 1980 up until 1983, Petitioner/Plaintiff enjoyed a successful

practice based on new patients received from Yellow Page Advertising. From 1983 onward, Petitioner/Plaintiff started experiencing many problems associated with his telephone lines that Pacific Bell and Pacific Telephone did not seem able to alleviate.

The complaint filed December 6,1984, Damascus vs. Pacific Bell Company, Pacific Telephone, AT&T, DOES I through XXX reads as follows:

I.

"The identity of these defendants designated herein as DOES I through XXX, and each of them, is presently unknown to Plaintiff, but each defendant is in some manner responsible for the wrongs hereinafter alleged.

II.

"During a period from at least February 1983 to at least September 1984, Plaintiff was subjected to various interferences of his telephone lines, equipment and reception,

primarily interruptions in CALL FORWARDING, but including other interferences related to the OPEN LINE discovered in October 1984 by a line tester."

III.

"Defendant AMERICAN TELEGRAPH & TELEPHONE CO., Inc. (hereinafter AT&T) formerly owning and operating PACIFIC TELEPHONE CO., serviced said telephone lines and equipment during and after February 1983. After January 1, 1984, AT&T transferred operation of Plaintiff's telephone lines over to Defendant PACIFIC BELL CO., INC."

IV.

"Plaintiff made at least twenty-nine complaints throughout 1983 & 1984 to both Pacific Telephone Co. and Pacific Bell Co. concerning the various interferences he was subjected to. Nothing was done to rectify the problem of interferences in 1983."

V.

"Plaintiff complained to the Security & Special Services Department of Pacific Telephone in 1983 and to the Security Department of Pacific Bell in 1984. Neither agency would rule out the possibility of surveillance yet nothing was done to relieve irritating problems plaguing Plaintiff's telephone line. The persistence of the problems plaguing Plaintiff's telephone line lead Plaintiff to suspect possible surveillance.

VI.

Negligent maintenance of the telephone lines and/or equipment interferred with the regular conduct of Petitioner's business affairs. These interferences were not only annoying but resulted in a loss of business and much stress to Petitioner and therefore Petitioner is entitled to $500,00 as compensatory damages and $500,000 as Punitive damages.

STATEMENT OF RELATED APPEALS DISMISSED IN THE NINTH CIRCUIT COURT OF APPEALS IN WHICH PETITIONER FILED WRITS OF MANDATE TO COMPEL PACIFIC BELL TO ANSWER INTERROGATORIES

Petitioner alleged that he had documents confiscated from his safe deposit box, office, and residences by defendants, without warrants presented to Petitioner by conspiring defandants, resulting in a loss of Petitioner's evidence needed to support Petitioner's Rule 11 statement requested by Judge Ingram, assigned to all three complaints filed by Plaintiff to meet the statute of limitations deadlines in the United States District Court for the Northern District of California. Among the documents confiscated were Freedom of Information Act correspondences that Petitioner made since he was unlawfully searched and detained by Federal agents in November of 1979 for unknown reasons and also missing

from Petitioner's safe deposit box were Administrative Claims and certified mail receipts for these claims sent to three Federal agencies including the F.B.I., the D.E.A., and the Department of Health and Human Services. Petitioner had previously mailed one-hundred-day claims to the State of California, State Board of Control since 1984 and felt that the Administrative Claims were required prior to filing his original complaint. Petitioner originally filed a claim against Pacific Bell, Pacific Telephone and AT&T in State court in December of 1984 but after discovering the theft of documents from Petitioner's safe deposit box in early 1985, Petitioner was infuriated by what he believed were violations of his constitutional and civil rights resulting in Petitioner's Federal complaint filed April 7, 1985, just barely within two years after discharging Patty Borgia as a dental assistant for turn-

ing away cash customers, scheduling unwanted Medi-cal patients and interfering with Petitioner's business while acting as an investigator for Federal, State and Municipal Law Enforcement agencies.

Knowing that these documents were stolen, Petitioner based the jurisdiction of his complaint on violations of Petitioner's constitutional and civil rights during the course of unlawful investigations should bring up a whole new statute, however Petitioner file filed two additional complaints:
No. C86 20229 based on the Federal Tort Claims Act and No. C86 20234 based on 42 USC 1983.

The last two complaints were consolidated with No. C85 20209 before Petitioner was allowed to serve defendants and all three complaints were dismissed on May 13, 1986 without hearing any of Petitioner's discovery motions pending Motion to Dismiss by defendants. In all three complaints, Petitioner/

Plaintiff alleged that unlawful surveillance was used by conspiring government defendants to divert business from Petitioner/Plaintiff's business. Yet after serving defendants discovery motions of Petitioner/Plaintiff were ignored. The initial status conference of October 7, 1985 was cancelled and never rescheduled. Petitioner pleads that at least a minimum amount of discovery is paramount and should have been allowed prior to dismissing complaints. Rule 11 should not have been used as a crutch by Judge Ingram to prevent discovery and to dismiss all complaints pursuant to 12 (b) (6). Judge Ingram first dismissed Petitioner/Plaintiff's claim WITH LEAVE TO AMEND, but later in t he same hearing, instructed Plaintiff to await his written orders prior to filing an amended complaint. Plaintiff complied with all verbal orders as issued by Judge Ingram at this December 13th hearing. However, Judge Ingram FAILED TO

ISSUE ANY WRITTEN ORDERS, and the clerk's minutes of that December 13th hearing were not filed and the transcript was not made available until March 15, 1986. Judge Ingram only requested that Ray Grueneich acting as an officer of the court, provide a statement concerning administrative claims (stolen by defendants) concerning whether or not Plaintiff would be allowed Leave to Amend in regard to Federal defendants or defendant the United States of America. The court received such statements from both Plaintiff and Ray Grueneich. ON FEBRUARY 13, 1986, JUDGE INGRAM DISMISSED ALL BUT ONE DEFENDANT BASED ON MISUNDERSTANDING OF HIS OWN ORDERS VERBALLY ISSUED DECEMBER 13, 1985.

JUDGE INGRAM WRONGFULLY DISMISSED ALL DEFENDANTS CAPABLE OF DISCLOSING CONTENTS OF FEDERAL COURT ORDER FOR WIRE SURVEILLANCE.

Petitioner has never been convicted of any crime and has been given the run-around

concerning Freedom of Information Act requests. An on-going investigation of Petitioner continues to violate his constitutional and civil rights.

Petitioner had the United States Attorney General and the Attorney General of the State of California served with interrogatories and requests for production of documents, and on October 15, 1985, Petitioner filed motions to compel discovery but was told by the court clerk that discovery motions would not be heard or scheduled pending Motions to Dismiss by defendants.

PLAINTIFF'S WRIT OF MANDAMUS OR petition for discovery (in pro per) Plaintiff, Alexander Damascus, acting in pro per, respectfully requests this Court to hear a Writ of Mandamus..... (in lieu of Judge Ingram's misunderstanding of his own orders)..... in Damascus vs. Defendant Pacific Bell and DOES in California Superior Court Case No. 563439 filed

in San Jose, on December 1984 for interference Plaintiff experienced with his telephone communications that Plaintiff alleges resulted in a loss of business. . . The Interrogatories requested whether Plaintiff's telephones were ever subjected to any type of wire-tap or other means of surveillance. Interrogatories also asked: The party who placed the order for surveillance to you; the individual making the order and his or her title; the date of such order; if in writing, will you attach without the necessity of a Formal Notice to Produce a copy of it; the date the surveillance was commenced; has the surveillance been terminated and, if so, the date of termination.

Plaintiff was informed that one of his telephone lines was not subjected to any form of surveillance, while his other telephone lines were not subjected to any "unlawful" surveillance. Plaintiff further discov-

ered that as Pacific Bell claims that the problems experienced by Plaintiff with his telephone lines are d ue to third parties whose names they cannot disclose and which the Superior Court of California lacks jurisdiction.to force Pacific Bell to disclose, pursuant to 18 USC 2510 et seq. 18 USC 2518 (8)(b) prohibits any person from divulging the existence of a wiretap.

IN DEFENDANT PACIFIC BELL'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL FURTHER ANSWERS, Pacific Bell responded:

"As discussed with Plaintiff on numerous occasions and as set forth in Pacific's letter of July 19, 1985, attached hereto as Exhibit A, Pacific cannot divulge the existence or non existence of any valid, court ordered wiretap. Any lawful wiretap order would would be issued pursuant to 18 USC 2518 (8)(b) prohibits any person from divulging the existence of a wiretap. If Pacific informs one customer there are no lawful or unlawful wiretaps and only tells another customer there are no lawful wiretaps, the second customer would deduce there are lawful wiretaps on his line."

Thus Plaintiff learned that there were what Pacific Bell considers lawful wiretaps on

Plaintiff's telephone lines.

Judge Ingram dismissed Petitioner's Writ of Mandamus on Feruary 24, 1986, stating:

"First, the basis for review must be a federal question. Here, Plaintiff is merely raising an issue of state discovery law and thus, review or intervention by this court would be improper."

Intentional abuse of Federally court-ordered surveillance under color of law for purposes of investigation indeed represents a federal question and Judge Ingram's failure to acknowledge such alleged material issues of fact yet to be determined, may arise out of the fact that Judge Ingram alledgedly issued orders for unlawful surveillance and warrantless search and seizure of Petitioner's safe deposit box to cover-up false claims of staged dental malpractice and justify the unlawful use of dental auxiliaries. 1986 complaints were dismissed before Ingram

allowed time to serve any defendants including Pacific Bell on these complaints. Plaintiff had to file the new complaints to meet Statute of Limitations deadlines of April 7,1986 concerning 42 USC 1983 or 28 USC 1983. The essence of the Second Amended Complaint allegations with respect to Defendant Patty Borgia(hereinafter Borgia, is that she acted as an undercover agent for either a Federal agency,California state agency or municipal agency or all of the above and that in such capacity she did a number of acts which were detrimental to Plaintiff and violative of his federal constitutional rights. If the Court deems any of the details mentioned herein to be not included in the Second Amended Complaint or to not clearly appear therein,the appropriate disposition of the motion would be to dismiss with leave to amend. Among the wrongs presented by

Plaintiff's pleadings is that Borgia pretended to be a bona fide applicant for the position of dental assistant and receptionist,that with such ruse and deception Borgia insinuated herself into a position of trust and responsibility for Plaintiff's private business affairs and records. Such position of trust and responsibility enabled Borgia to have access to records and patients of Plaintiff,and Borgia in fact accomplished such access. While employed by Plaintiff,Borgia cooperatively submitted a document requested by Plaintiff that fraudulently denies the law enforcement agencies that she was working for. This document attached as Exhibit A was written and signed by Borgia.Defendant Borgia refused to answer Plaintiff's interrogatories and Borgia made a Motion for Dismissal based on Rule 41 stating that she

listed her parents address on an employment application that she supposedly submitted to Plaintiff in December 1982, On March 4,1986, Plaintiff produced a document showing good cause why Borgia was not served with other defendants. This was a resume that she submitted to Plaintiff December 6, 1982 in which no such address of her parents was listed. Plaintiff believes that this obvious lie led to the denial of Borgia's Motion to Dismiss,however, Judge Ingram instructed Borgia how to file a Motion for Dismissal that he said he would accept at a later hearing.Plaintiff acting in Pro Per never received any such consideration for his motions and deems this action of Judge Ingram unfair and discriminatory.Plaintiff made a proper Motion to Compel defendant Borgia to answer interrogatories which was scheduled for

March 10,1986 however,this motion was ignored pending Borgia's Motion to Dismiss.

In Summer of 1983,Plaintiff called a dentist named Dr.James Gawley.Dr.Gawley was not present but his senior partner Dr.Caceres whom Plaintiff had never met before answered the telephone. In the ensuing conversation Dr.Caceres demonstrated a close knowledge of the various events including the specifics of Borgia's employment and the specifics of the statement which Plaintiff had required Borgia to sign. Dr Caceres warned that the Santa Clara County Dental Society was after Dr.Damascus')ass" and that an investigation was being directed by the Director of the Board of Dental Examiners. Plaintiff was not a member of the Santa Clara Dental Society while the Director of the Board of Dental Examiners was not only a member of

the Dental Society (a private organization) but also disliked non-members who performed root canals. Plaintiff was informed that a medical malpractice claim which was mailed to Plaintiff under the encouragement of the Director of the Board and claimed damages in excess of $3000.00 was simultaneously sent to Plaintiff the very day a new law in the dental practice act was enacted designed to reverse a United States Supreme Court decision of the Spring of 1982. The law would make it a criminal offense for any dentist to accept an insurance payment as full payment for dental services. Previously the Warren decision of 1982 ruled that forgiving the patient for not paying his portion of the total charge was not a crime. Plaintiff did not accept insurance payment as full payment but Plaintiff's office personnel were slow at sending accounts to collection. In any event,

Plaintiff was informed by Dr.Gawley's senior partner that due to the initial dental malpractice claim an investigation had been commenced even though the dental practice act specifically states that the director of the Board of Dental Examiners can only take action when payment for claims exceed $3000.00, By request of Safeco,Plaintiff's dental malpractice carrier the claim was settled out of court for less than $3000.00 and thus premature actions initiated by the Board of Dental Examiners were discriminatory and unlawful pursuant to the California Dental Practice Act.

Plaintiff's informant,Dr.Gawley's senior partner, died in an auto accident within three weeks of Plaintiff's telephone conversation.

During Borgia's employment the director of the Board of Dental Examiners was an

endodontist, specializing in root canals and Plaintiff's dental malpractice claim of December 7, 1,82 concerned root canal therapy. Sometime after Plaintiff discharged Borgia from employment the position of the Director of the Board of Dental Examiners was eliminated. This information was submitted to Judge Ingram in a confidential statement ursuant to his Local Rule II request.

The foregoing state of affairs consitutes a violation of Plaintiff's Fourth Amendment rights under the leading case of Gouled vs. United States (1921) 255U. S.298, 65 L.Ed.2d 734,81 S.CT.679. Gouled is still valid precedent, and is cited by more modern cases for this proposition. e.g., Hoffa vs.United States(1,66) 385 U. S.293,301,17 1.Ed.2d 374,381,87S.Ct. 408("The Fourth Amendment can certainly be violated by guileful as well as by forcible

intrusions into a constitutionally protected area."/Cases in which a person is deceived into believing that the government agent is a bona fide colleague in crime,e.g.,Lewis vs.United States(1966) 385U.S.206,17 L.Ed.2d 312,87S.Ct.424,are obviously not applicable here. Plaintiff was engaged in the lawful profession of dentistry. The fact that he may have been suspected of wrongdoing by federal and/or California and/or local governmental agencies does not reduce his Fourth Amendment rights to that of a criminal seeking a partner in crime.

A dditionally, plaintiff's Fifth and/or Fourteenth Amendment rights to Due Process as a prerequisite to the deprivation of property were also violated by Borgia. Again the pleading on this point may not have been artful,but any defects in that regard can be repaired in a Third Amended

Complaint in this regard is that in an effort to more efficiently and effectively investigate and document suspected wrongdoing Burgia in her capacity as government agent engaged in a systematic pattern to deflect from Plaintiff's dental practice some patients that were privately funded and to accept, even contrary to Plaintiff's guidelines, patients who utilized Medi-Cal funding. Plaintiff is not confined to the proposition that entrapment is necessarily a violation of Due Process principles. Plaintiff also contends that when a government agent insinuates themselves into a business in an effort to either induce or detect wrongdoing, and in the course of such law enforcement(sic) activity deprives the owner of such business of his property, that conduct is a deprivation of property without due process of law. Changing the nature of a dental practice from privately paying

patients to Medi-Cal funded patients, even in part, detracts from the value of such dental practice.

Plaintiff's substantive Due Process privacy rights were also violated by this procedure.

Furthermore, even if Borgia was acting solely on behalf of the California Dental Association, her acts would constitute an unlawful restraint of trade by such attempts to damage to Plaintiff as a non member of such Association.

Plaintiff has stated causes of action under 42USC 1983, Bivens vs. Six Unknown Named Agents (1971)403 U.S. 388,395,91S.Ct. 1999,2004,("Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty."), and under federal anti-trust statutes. In the Second Amended Complaint for Damages, Plaintiff alleged that State and Federal defendants

were responsible for unlawful surveillance, diversion of Plaintiff's business, and unlawful search and seizure from Plaintiff's safe deposit box. Plaintiff stated that the court retained Pendant jurisdiction against private defendants and Plaintiff alleged that telephone surveillance and the theft of documents from Plaintiff's safe deposit box were used to manufacture reasons for Borgia's existence, cover-up reasons for the initial investigation of Plaintiff and manufacture wrongdoings of Plaintiff to achieve an end result to justify the means of an unlawful investigation.

JUDGE INGRAM MISUNDERSTOOD HIS OWN ORDERS ISSUED DECEMBER 13, 1985 ".... I'm going to grant the motions to dismiss, with leave to amend, unqualified, within 30 days, as to all parties except the United States. And I'll take your-- I've never done this before, but I will give you Counsel, ten days to advise the Court whether or not you think there is a reasonable chance that you can state a claim under the Tort Claims Act, procedurally speaking. And if you can't, I expect you to tell me, in which case it would be without leave to amend as to the United States. . ." (RT 23:10-21)

CONSCLUSION

Petitioner contends that he has good cause for this court to aid the State Appellate Court's jurisdiction, concerning 18 USC 2518(8)(b). This petition has FEDERAL QUESTION jurisdiction. This petition should be allowed under F.R. Civ. Pro. Rule 52(b) to amend and make additional findings of fact. fact. Also Petitioner sees the November 12, 1985 Order of Judge Ingram stating "Plaintiff shall file no further complaints without leave of court", as an appealable judgement under Rule 50(b). Appeals by Permission under 28 USC 1292(b) can be granted as Petitioner intends to show good cause and a deviation from the norm concerning discovery. Federal court orders for the warrentless search and seizure of Petitioner's safe deposit box andfor use of telephone surveillance equipment to deny Petitioner ~~incoming~~ business under color of law vio-

late the Fourth and Fourteenth amendments to the United States Constitution. Petitioner further alleges that the United States District Court for Northern District of California issued orders for unlawful surveillance based on false affidavits presented by unknown parties concerning Petitioner/Plaintiff. Petitioner asserts that discovery is essential to the amendment of his complaint and the unusual denial of any discovery warrants this court's immediate intervention in the interest of truth, justice, and the protection of Petitioner's constitutional rights.

Petitioner believes that he has a right to Petition for redress of grievances and this petition should be construed as such; BIVENS vs. SIX UNKNOWN NAMED AGENTS 91 S.CT. 1999,403 U.S.388,(1971). Petitioner's finances have been severly

limited by defendants, who, under color of law, also interfered with Petitioner's attempts to find an attorney of record. This court should not dismiss this petition due to flaws in the pleadings. Thomas Jefferson and the great fore fathers of our country wrote the United States Constitution in part to protect and preserve the rights of citizens from undue repression, to guarantee due process of law to the common man and not just appease a semetic game amongst attorneys.

If State or Municipal agencies applied for a Federally court-ordered wire-tap or participated in the interception that resulted in interferences that the state court should have jurisdiction in determining if State or Municipal parties presented a false affidavit or conspired with Federal agents to

present a false affidavit concerning the investigation of Petitioner. Most of sequence 18 USC 2510 through 2520 pertains to the use of surveillance devices as a form of violation of privacy rights under the Fourth and Fourteenth Amendments to the United States Constitution. Petitioner is alleging that the abuse of these devices is beyond the scope of intended use by unknown agencies of whom are also intentionally abusing it's use to prevent Petitioner from receiving new patients from the public that are not specifically sent for the purposes of investigation.At the very least Petitioner requests a re-hearing before the California Court of Appeals for the Sixth District.

Respectfully submitted,

ALEXANDER DAMASCUS, D.D.S.

Attorney for Petitioner
Acting in Pro Per

STATEMENT SHOWING GOOD CAUSE FOR TERMINATING UNLAWFUL SURVEILLANCE AND AIDING THE STATE COURT TO ALLOW DISCOVERY OF PARTIES INVOLVED IN FEDERALLY COURT-ORDERED SURVEILLANCE

Immediatly after Petitioner had defendants served in Damascus v. Borgia in Federal Court patient Russel Seja was allegedly sent by unknown investigators to Petitioner's office with a paralliaed lip on August 10, 1985. He had lied on his medical history attempting to cover up this condition and requested Petitioner to perform a root canal on the paralized side of his face. Upon accidental discovery of the paralized lip, Petitioner refrained from doing any treatment to avoid another staged dental malpractice claim. However in June of 1986, Petitioner was served with a false claim for dental malpractice in Hasse vs. Damascus in Superior Court in San Jose in which Ms. Hasse is alledging that Petitioner caused her a para-

lized lip. Petitioner wished to expose through discovery that patient Nancy Hasse was alledgedly encouraged to return to Petitioner's office immediatly after Petitioner filed a claim against Borgia, et al., while investigators where limiting Petitioner's business through unlawful surveillance to patient's sent soley for the purposes of investigation. In the first set of interrogatories served to defendants in Fed. court case 085 20209 Petitioner asked, "Was patient Nancy Hasse encouraged to return to Petitioner's office for purposes of investigation?" The defendants refused to answer interrogatories or produce requested documents before COMPLAINT was dismissed, pursuant to 12 (b)(6) without discovery while material issues of fact remained in dispute. Petitioner wishes to expose through discovery that dental assistants removed, altered, and disposed of

patient records while working undercover for defendants. When a dentist is sued for malpractice, juries have traditionally found dentists guilty when they lack records to prove innocense. Moreover, if Hasse denies involvement in said investigations, an uninformed jury will possibly fall victim to fake injuries and foul play. (Staged dental malpractice claims so defendant State Board of Dental Examiners can take action against Petitioner). Petitioner further wishes to discover the involvement of Petitioner's dental malpractice carrier. Safeco recently declined to renew Petitioner's dental malpractice coverage based on three untried staged false claims. Defense attorneys for petitioner assigned by Safeco refuse to pursue discovery request of Petitioner. Petitioner must expose the involvement of Hasse's false expert witnesses to ensuing

investigations. On December 20, 1982 Petitioner called the State Board of Dental Examiners who lied and said there were "no Complaints" in Petitioners file. By April 1983 Vivian Ramsey of the Board indicated that the Board had lied because complaints were under investigation. The only complaint submitted to Petitioner was that of Patient Dean Altschuler of the Sheriff's Department possibly related to an investigation involv- Leland Altschuler, Asst. U.S. Atty. GEM.

18USC2518 8(b) is preventing Petitioner from exposing involvement of Hasse's false expert witnesses with said unlawfull telephone surveillance. Unknown investigators who have already denied Petitioner Due Process of Law through alleged unlawfull Surveillance are now attemting to stage a trial based on false complaints to justify their actions.

Petitioner

COURT OF APPEAL

OF THE STATE OF CALIFORNIA

in and for the

SIXTH APPELLATE DISTRICT

No.H001346

ALEXANDER DAMASCUS,
Plaintiff and Appellant,

vs.

PACIFIC BELL COMPANY, et al.
Defendant and Respondent

Superior Court No. 563439

BY THE COURT

The motion to dismiss appeal is granted and the appeal on file herein is ordered dismissed.

Dated JAN.16,1986

AGLIANO, Acting PJ
Acting P.J.

UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT
P.O.BOX 547
San Francisco, California 94101

May 30, 1986

OFFICE OF THE CLERK
U.S.DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
U.S.COURTHOUSE
280 South First St.
San Jose, Ca. 95113

Re:CA #85-2873 DC # C 85-20209WAI

Short Title: Alexander Damascus,D.D.S.
vs. Patty Borgia

Dear Clerk:
The following document in the above listed cause is being sent to you under cover of this letter.
Certified copy of the Entry of Dismissal

Very truly yours,

Cathy A. Catterson,
Clerk of the Court

By: Deputy Clerk

O R D E R D E N Y I N G R E V I E W

AFTER JUDGMENT BY THE

COURT OF APPEAL

6th District, No. H001346

IN THE SUPREME COURT OF

THE STATE OF CALIFORNIA

IN B A N K

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DAMASCUS

v.

PACIFIC BELL COMPANY et al.

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Appellant's Petition for review DENIED.

BIRD

Chief Justice

(Supreme Court, Filed APRIL 2,1986,
Laurence P. Gill, Clerk.)